

CHAPTER 752 CORRECTIVE, DISCIPLINARY AND ADVERSE ACTIONS

SUBCHAPTER 4 REDUCTION IN GRADE REDUCTION IN PAY FURLOUGH FOR 30 DAYS OR LESS SUSPENSION OF MORE THAN 14 DAYS INDEFINITE SUSPENSION REMOVAL

- NOTES:** (1) In most cases, reduction in grade or removal based solely on unacceptable performance is covered by Chapter 432 of this Manual.
- (2) The options described in this Subchapter are the most complicated of all actions taken against employees. It is essential that each such action be taken for sufficient cause and in compliance with law and regulation. For these reasons, no action should be taken without the professional guidance of Human Resources Office (HRO), Norfolk.

1. DEFINITIONS

- a. *Reduction in Pay.* A reduction in the rate of basic pay fixed by law or administrative action for the position held by an employee.
- b. *Reduction in Grade.* A reduction to a lower grade level of classification under a position classification system.
- c. *Furlough for 30 Days or Less.* The placing of an employee in a temporary status without duties and pay because of a lack of work or funds or other non-disciplinary reasons. NOTE: Furlough in excess of 30 days is handled under reduction-in-force procedures.
- d. *Suspension of More than 14 days.* The placing of an employee in a temporary status without duties or pay for a specified number of days for disciplinary reasons.
- e. *Indefinite Suspension.* The placing of an employee in a non-duty, non-pay status for an unspecified number of days pending the resolution or outcome of a matter involving the employee.

f. *Removal.* The involuntary separation of an employee from the activity except when taken as a reduction-in-force action.

2. CONDITIONS FOR USE

a. Before effecting any action described in this Subchapter, the employee must be given at least 30 days advance written notice while in a duty status. The only exceptions are if:

(1) There is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed. When the crime provision is invoked, a proper official may effect an action in less than 30 days following the advance written notice. The official may require the employee to furnish any answer to the proposed action and affidavits and other documentary evidence in support of the answer within such time as under the circumstances would be reasonable, but not less than seven days. When the circumstances require immediate action, the official may place the employee in a non-duty status with pay for such time as is necessary to effect the action.

(2) Furlough without pay or administrative leave is necessary due to unforeseen circumstances such as sudden breakdowns of equipment, acts of nature, or sudden emergencies requiring immediate curtailment of activities.

(3) If the circumstances are such that retention of the employee in a duty status during the notice period may be injurious to the employee, fellow workers, or the general public, may result in loss or damage to government property, the nature of the employee's offense may reflect unfavorably on the public perception of the Department of the Navy (DON), or would otherwise jeopardize government interests, the employee may be placed in a non-duty pay status during the notice period. Generally, when the circumstances require immediate action, the official may place the employee in a non-duty status with pay for such time as is necessary to effect the action. Excused absence for this purpose should be used only in rare circumstances and care should be exercised to use the minimum amount of excused absence necessary in any individual situation. The advance written notice will include the reasons for not retaining the employee in a duty status during the notice period.

b. The notice must conform to the following requirements:

(1) State the specific reasons for the proposed action.

(2) Specify the name and title of the official designated to hear an oral reply and/or receive the written reply (the official so designated must have authority to either make or to recommend a final decision on the proposed action).

(3) Specify a reasonable time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer. Employees in receipt of an advance notice may request additional time to respond orally and in writing. The official designated to accept the response may make a decision regarding such a request. A summary or verbatim transcript of the employee's oral reply, if any, must be made and placed in the official file. A copy shall be furnished to the employee or his/her representative, as appropriate.

(4) State the right of the employee or the employee's representative to review the material which is relied upon to support the reasons given in the notice.

(5) If appropriate, state the basis for selecting a particular employee for furlough, when some but not all employees in a given competitive level are being furloughed, and the reason for the furlough.

(6) Provide a reasonable amount of official time to review the material relied upon to support the proposal and to prepare an answer and to secure affidavits, if the employee is otherwise in a duty status.

(7) Inform the employee of the right to be represented by an attorney or other representative.

c. Render a written decision at the earliest practicable date which:

(1) Considers only the reasons specified in the notice of proposed action.

(2) Explains the reasons for the decision.

(3) Considers any answer of the employee and/or the employee's representative made to a designated official.

(4) Is signed by an official in a higher chain of command position than the official who proposed the action (if the Activity Head signed the advance written notice, the Activity Head may sign the written decision).

(5) Specifies the employee's right of appeal to the Merit Systems Protection Board (MSPB) and the right, when applicable, to file a grievance under a specific negotiated grievance procedure, but not both.

(6) States the time limit for filing an appeal with the MSPB.

(7) Provides a copy of the MSPB regulations, a copy of the MSPB appeal form and the address to which it should be sent.

(8) Is delivered to the employee on or before the effective date of the proposed action.

3. **RIGHT TO REPRESENTATION.** An employee in receipt of a notice of proposed/adverse action or a written decision may be represented by an attorney or any other person of his/her choice, unless disallowed by a proper official.

4. **GRIEVANCE RIGHTS.** None, except for employees in a unit covered by a negotiated agreement. Employees in such a unit have those rights stated in the agreement. If an employee is in this category, he/she may elect to appeal to MSPB, or under the provisions of the negotiated grievance procedure, but not both. The initial election of the employee is final.

5. **APPEAL RIGHTS.** The following employees have appeal rights to MSPB:

a. An individual in the competitive service who is not serving a probationary or trial period under an initial appointment, or who has completed one year of current continuous employment under other than a temporary appointment limited to one year or less.

b. A non-preference eligible who has completed two years of current continuous service in the same or a similar position within the Executive Department.

c. A preference eligible who has completed one year or more of current continuous service.

6. **EQUAL EMPLOYMENT OPPORTUNITY (EEO) COMPLAINT.** An employee who alleges discrimination may do one of the following:

a. File under procedures in a negotiated agreement, if in a bargaining unit represented by a labor organization; or

b. Elect to file an EEO complaint with DON; or

c. Elect to appeal to MSPB, including the allegation of discrimination.